



LAKE COUNTY PM₁₀ REDESIGNATION

#03-70(APCB)

Overview

Amends the designation of Lake County from nonattainment to attainment for particulate matter (PM₁₀).

Citations Affected

Amends 326 IAC 1-4-1.

Affected Persons

Businesses and citizens of Lake County, Indiana.

Reason for the Rule

The rule needs to be amended to reflect the federal rulemaking that redesignated Lake County from nonattainment to attainment for PM₁₀.

Economic Impact of the Rule

This action will have a positive economic impact because permitting requirements for new and expanding businesses are less onerous in attainment counties. This rule action is a direct adoption of a federal requirement and contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

Benefits of the Rule

This rule will provide consistency with the federal redesignation of Lake County to attainment for PM₁₀. Until the state rulemaking is effective, Lake County will be subject to the state's nonattainment rules for permitting. However, emission limits in the state implementation plan (SIP) will continue to be in force.

Description of the Rulemaking Project

On November 6, 1991, U.S. EPA published a nonattainment designation for northern Lake County for the PM₁₀ standards. These standards include

annual average concentrations and a standard for 24-hour average concentrations. The area designated nonattainment included the cities of Gary, East Chicago, Hammond, and Whiting. During the 1990s, significant reductions in PM₁₀ emissions were achieved in Lake County due to the adoption of PM₁₀ control rules and efforts by Lake County industry. Air quality improved, as measured by IDEM's ambient air quality monitors. As a result, on September 25, 2002, Indiana requested that the PM₁₀ designation for this area in Lake County be changed from nonattainment to attainment. Included with this request were a summary of relevant air quality data, evidence of the opportunity for public review of this request, including a public hearing held July 18, 2002, and a discussion of how the various criteria for redesignation have been met.

U.S. EPA published approval of Indiana's request to redesignate Lake County to attainment for PM₁₀ in the Federal Register on January 10, 2003 (68 FR 1370). This action was effective March 11, 2003. U.S. EPA's action was based on a review of the five prerequisites for redesignation of areas from nonattainment to attainment as identified by Clean Air Act Section 107(d)(3)(E). U.S. EPA concluded that these criteria have been met with respect to PM₁₀ in Lake County. These criteria are:

1. The area has attained the applicable air quality standards.
2. The area has a fully approved SIP under Section 110(k) of the Clean Air Act.
3. U.S. EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.
4. U.S. EPA has determined that the maintenance plan for the area has met all of the requirements

of Section 175A of the Clean Air Act.

5. The state has met all requirements applicable to the area under Section 110 and Part D of the Clean Air Act.

At this time, IDEM is proposing to make changes to Indiana's rules for consistency with the redesignation of Lake County to attainment for PM₁₀. U.S. EPA approved the maintenance plan for Lake County, which includes maintaining existing programs and air monitoring. The maintenance plan requires that certain rules specific to Lake County remain in effect.

A notice under IC 13-14-9-8 is appropriate for this rule action because it is a direct adoption of a federal requirement and contains no amendments that have a substantive effect on the scope or intended application of the federal rule. In addition, IDEM conducted a public hearing on July 18, 2002, in Gary, Indiana, as required by Section 110(a)(2) of the Clean Air Act to ensure proper public participation. U.S. EPA conducted a public process as well when it approved Indiana's redesignation request.

This rulemaking incorporates into state rules 68 FR 1370 (January 10, 2003), the final approval for redesignating Lake County to attainment for the PM₁₀ standards. Until the state rulemaking is effective, Lake County will be subject to the state's nonattainment rules for permitting. Emission limits in the SIP will continue to be in force. Rules included in the maintenance plan for Lake County continue to apply to the redesignated area.

Scheduled Hearings

First Public Hearing: May 7, 2003, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana.

Second Public Hearing: September 3, 2003, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The draft rules are consistent with federal requirements.

Rulemaking Process

The first step in the rulemaking process is publication of one of three types of notices in the *Indiana Register*. The first type of notice is a first notice of comment period. The first notice of comment period includes a discussion of issues and opens a first comment period. A second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The second type of notice is a notice under IC 13-14-7 (a "section 7" notice). A section 7 notice contains a determination by the commissioner under IC 13-14-9-7 that only one comment period is required because the policy alternatives available are so limited that there would be no benefit to the environment or affected persons. It contains the commissioner's determination and findings, the draft rule, a request for written comments and a notice of first meeting/hearing. The third type of notice is a notice under IC 13-14-9-8 (a "section 8" notice). A section 8 notice contains a determination by the commissioner under IC 13-14-9-8 that no public

comment periods are required for one of the specific reasons listed in the statute. It contains the commissioner's determination and findings, the draft rule and a notice of first meeting/hearing. In each case the Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Chris Pedersen, Regulatory Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).